



15 September 2009

Mr Jorgen Holmquist
Director General of DG Internal Market and Services
European Commission
B-1049 Brussels

Dear Mr Holmquist

Consultation Paper on the UCITS Depository Function

The Depository and Trustee Association (DATA) represents all depositaries and trustees of UK-based authorised unit trusts and open-ended investment companies. At the end of May 2009, the members of DATA were responsible for safeguarding £391.3 billion of funds under management.

We welcome the opportunity to comment on this important work. The interests of investors are our top priority, and we would hope that this consultation will lead to a greater understanding of the risks of making investments and where the responsibility for managing and mitigating those risks properly lays. We make the following observations:

- We believe that the reinforcement of practices regarding custodian delegate oversight and monitoring within the UCITS framework would benefit from clarification. We would support this clarification within a clear regulatory framework around which Depositaries can be judged and demonstrate oversight of their sub custody network as being appropriate without the need to reverse the burden of proof.
- However, the first steps should be to identify and clarify the functions of the depository and then to define the standard to which the depository should comply with in order to carry out the function.
- We also believe that the CESR review should be completed so that the Commission can then assess whether the liability regime needs to be clarified as setting a fully harmonised liability regime in the EU would require significantly more work and analysis than that suggested by the timelines set by the Commission. The complexities of the 27 different liability regimes (including property rights, insolvency law etc) creates the absolute need of a considered consultation with significant industry participation.

We strongly advocate that the approach to the development of the UCITS framework is undertaken in a proportionate manner. Our detailed response is attached. We would be very happy to discuss any of the points we have made with you.

Yours sincerely

Kevin Tomlin
DATA Chairman

**WORKING DOCUMENT OF THE COMMISSION SERVICES
(DG MARKT)
CONSULTATION PAPER ON THE UCITS DEPOSITARY FUNCTION**

I. DEPOSITARY'S DUTIES

A. Safe-keeping duties

Question 1) Do you agree that the safe-keeping (and administration) duties of depositaries should be clarified?

DATA believes that there are two aspects to these questions:

- (i) Distinguish the proper functions of a depositary which would define its role
- (ii) Define the regulatory standards which the depositary should comply with in order to carry out the function

In relation to regulatory standards, Depositaries would benefit from a clarification of the requirements necessary to undertake sufficiently robust due-diligence in ensuring the safe-keeping of assets. It is recommended that sub-custodian standards are better codified, including appropriate criteria for regulation and financial strength, legal arrangements and operational performance.

A framework of network management best practices should be emphasised, such as annual due diligence and ensuring that sub-custodians are obliged to provide annual independent audit controls assessment reports (SAS 70 / FRAG 21 or equivalents), including confirmation of proper segregation of custody controls from asset management functions / use of recognised external auditors / insurance and capital requirements / regular interim statement and reconciliation reporting.

We do believe that the reinforcement of practices regarding custodian delegate oversight and monitoring within the UCITS framework would benefit from clarification. We would support this clarification within a clear regulatory framework around which Depositaries can be judged and demonstrate oversight of their sub custody network as being appropriate without the need to reverse the burden of proof.

Question 2) Do you agree these duties should be clarified for each class of assets eligible to the UCITS portfolio?

This is a complicated area and the proposal requires substantially more thought. It is true that the financial products which are eligible for use within UCITS portfolios are more complex and are often registered outside the EU in third countries and emerging markets jurisdictions. As such we feel it would be a sensible approach to look at each asset class individually. However, as a starting point, we have provided preliminary thoughts on how this might be approached.

According to Article 22(1) of the amended UCITS Directive: "*a common fund's assets must be entrusted to a depositary for safe keeping*", however the UCITS Directive does not define the meaning of "safe-keeping". As a result of industry developments and the introduction of sophisticated settlement and clearing systems, safe-keeping of assets has needed to evolve over time, meaning that physical assets have been replaced by electronic records.

Consequently, there are many more parties involved in determining the rightful or legal ownership of assets besides the Depositary. For example the secondary market activity of over the counter trading has led to an increased trend for OTC transactions to take place through electronic networks and multilateral trading facilities. Other parties involved in the use of electronic recording of ownership can be Central Securities Depositories, brokers, issuers or registrars all dependent upon the asset types being held.

Because direct participation for the UCITS investor in electronic settlement systems (such as CREST, Clearstream or Euroclear) is not always possible and/or practicable, it is common for them to gain access to electronic settlement through custodians. In many cases it is the custodian, and not the client, who has a direct relationship with the settlement system, and the title of the client to the underlying assets is asserted through the custodian. This means that the rights of the client are contractual and not legal.

The broad assets available to a UCITS and the custodial requirements might be classified as follows:

- I. Assets held directly by the Depositary. (For example bearer securities).
- II. Assets which cannot be held directly by the Depositary, but are held through agents known as sub-custodians, which are selected and supervised by the appointed Global Custodian and which are reviewed for continuing suitability by the Depositary via on-going due-diligence and sample testing. (These might include listed securities, bonds or money market instruments).
- III. Assets that cannot be held by the Depositary or a sub-custodian (e.g. OTC derivatives, other structured products and might include certain structured debt instruments which are only recorded via book-keeping systems) OTC Derivatives are specifically held by the originator of the asset (a counterparty who must meet certain predefined criteria) who is selected and appointed by the UCITS or its Manager. (Examples might include, foreign exchange, or repurchase agreements).
- IV. Third party cash is a different matter again. Traditionally, Depositaries have been Banks. It is a clear principle of banking law that the deposit of cash with a bank establishes the relationship of debtor and creditor between the bank and the depositor. The bank is free to use the deposited money as it pleases, which means that the money would be available to the bank's creditors on its insolvency. The depositor's rights of repayment are contractual and not proprietary so in the event that the bank was to become insolvent the depositor must prove itself as an unsecured creditor.

Taking the above points into consideration, we do not necessarily know whether the AIFM Directive's reference to "*(b) safe-keep any financial instruments which belong to the AIF; (c) verify whether the AIF or the AIFM on behalf of the AIF has obtained the ownership of all other assets the AIF invests in,*" is actually possible - this will be dependent upon the meaning or definition of "safe-keeping"

Additionally, many of the assets held in a fund are held by agents or counterparties that are not selected by the depositary, consequently it is not appropriate or reasonable to expect the depositary to be held liable for the actions of these parties. Restatement and clarification of the responsibility of the fund manager in regard to its selection of investment types, exchanges and markets for trading and appropriate counterparty exposure would be our preference together with a codification of the minimum requirements relating to the appointment and monitoring of sub-custodians by the Depositary.

Standards and the extent of prospectus risk disclosure for investors do vary across Europe, and some further guidelines would seem appropriate, particularly as certain investment fund types will carry a potential for greater investor risk which we see as part of market risk in many circumstances.

Question 3) Are there any other appropriate approaches?

We would be interested to consider any other alternative approaches that the Commission may determine during any future consultation process.

Question 4) Do you agree to a common horizontal and functional approach of the custody duties on the listed financial instruments, to be applied to UCITS depositaries?

We do not understand this question and would welcome clarification from the Commission regarding the use of the terms "horizontal" and "functional" within the context of this question.

Question 5) Is there some specificity that may be applicable to the custody functions of a UCITS depositary that should be taken into account?

Please see our detailed response under question 2.

B. Supervisory duties

Question 6) Do you agree that the existing supervisory duties of the UCITS depositary should be clarified?

Question 7) If so, what clarification do you suggest?

Question 8) To what extent does the list of supervisory duties need to be extended?

Question 9) Do you agree that the 'only one depositary' requirement should be clarified?

- 6) Article 22 (3) of the UCITS Directive stipulates what a depositary should do in principle, but does not define how this should be achieved in practice. As such Member States have implemented diverging interpretations of these principles.

Despite this divergence, we are not aware of any regulatory failure in the performance of these duties, even resulting from the 'Madoff affair'. The affected Member States regulators are on record as having confirmed that Depositaries have acted in accordance with The UCITS Directive requirements regarding the safe-keeping of assets. Obviously we still need to wait to see the outcome from current civil law cases before local legislation can determine any legally binding precedent.

Already in practice in several jurisdictions, the Depositary is responsible for providing an oversight function (supervisory role) over the functions carried out by other parties. This should not be confused with requiring re-performance. Oversight can properly be performed on the basis of ongoing assessment of the controls and procedures of the manager, or their agent.

In considering the nature of depositary supervision, it is important to also understand the primary fiduciary role of the manager. The manager is primarily responsible for managing the fund. If an error is made e.g. a pricing error or an inappropriate investment, then the manager or its agent should correct it and take appropriate steps and actions to ensure such an error does not occur in the future. The depositary should oversee that investors are made whole as appropriate and the remedial steps are taken by the manager to avoid a recurrence.

If the Commission feel that further clarification is necessary, we would be interested to review the proposals, supported by evidence demonstrating a failure in respect of the Depositaries ability to meet the requirements under article 22(3) along with undertaking a full

cost/benefit impact review to understand the full implications of implementing such requirements.

- 7) Please see comments above.
- 8) Please see comments above.
- 9) We agree with this approach. There should only be one depositary for each fund, but the depositary will need to be able to delegate safe-keeping of fund assets (those which are available to be safe-kept) to other sub-custodians

II. RESPONSIBILITY REGIME

A. Liability regime in case of improper performance

1. Identification of the associated risks

Question 10) Do you think that the risks related to improper performance have been correctly identified?

We cannot fully answer this question until the review and clarification of the depositary's functions has been concluded. Nevertheless, we offer comments on the risks highlighted in the consultation:

10 (a) Loss of assets

Central Securities Depository Risk

In certain markets, assets are held directly with the local Central Securities Depository(CSD). While technically a delegation, this is not at the discretion of the Fund Depositary in question and it is therefore hard to see why the Depositary should be considered liable in the case of default of the CSD. Such Central Securities Depositories are already considered exempt from the Eligible Markets regime and therefore presumably sufficiently robust in the view of the regulators.

Market Risk

A similar situation may arise in certain emerging markets where there may be only one robust and reputable sub custodian used by most, if not all UCITS Fund Depositaries. In large part, with no realistic alternative, the use of that sub custodian could be seen as an investment risk rather than a custody delegation risk and as such, again with no real discretion available to the Depositary it is difficult to see how they should be liable in a default situation. Any requirement for immediate restitution of assets prior to conclusion of liquidation proceedings and the testing of the success of ring-fencing of assets is also not appropriate in our view. The likely outcome again is that most if not all Depositaries would simply refuse the manager the opportunity to invest in that market.

Again, primarily relating to emerging markets, while each sub custodian will make every effort to ring-fence the assets of each client from their own and other clients, in many instances the ability to recover assets in event of default is not tested by case law. Geopolitical risk cannot be discounted, whether it results in the loss of certain securities holdings, or whole asset classes, or indeed the nationalisation of the sub custodian itself. DATA finds it hard to justify these as liabilities of the Depositary as they again represent investment risk incurred through the investment decisions of the manager in accordance with the Fund prospectus and its risk disclosures to investors.

Also, we suggest a regulatory review to assess whether there are certain investment strategies which are considered to introduce unacceptable investment risk, including market participant risk, which investors cannot be taken to understand and which cannot be

explained by adequate risk disclosure. This could include any market whereby the types of protection envisaged cannot be provided, rather than looking to the depositary to assume those risks. The analysis of markets could be managed by an extension of the existing Eligible Markets regime, whereby the manager must consider with the depositary the investment, settlement and general market risk in order to assess its suitability

10 (b) Improper performance of the safe-keeping duties for assets which cannot be held in custody

In accordance with the UCITS Directive it should not be assumed that all assets of a Fund will be held within the global custodian or its sub custodian network. A large number of permissible and normal investment objectives within UCITS Funds will result in transactions such as cash deposits with 3rd parties, OTC derivative transactions and stock lending whereby cash and or securities are held by 3rd parties which are not and cannot be part of the Depositary's global custody network. The Depositary will ensure that these positions are held in the name of the Depositary or Fund and the UCITS Directive will be complied with to ensure collateral is held where appropriate, but normal counterparty risk remains. This risk is as a direct result of the investment decision of the manager rather than the actions or inactions of the Depositary.

10 (c) Improper performance of supervisory duties

Article 22 (3) of the UCITS Directive stipulates that a Depositary shall "ensure that", or "carry out" several functions relating to the operation of a UCITS. One of the possible risks identified by the Consultation, arising from the Depositary failing to carry out its supervisory duty, is the situation where a fund's portfolio is mis-valued, leading to the mis-calculation of the value at which shares and units are issued and redeemed.

The use of the term 'ensure' is not defined within Article 22 (3) and as such can be interpreted in different ways. Some Member States have determined that 'ensure' means that the Depositary will actually carry out the function itself. Others feel that 'ensure' does not mean carrying out the function oneself, but making sure that those responsible for that function carry it out appropriately, thus allowing the Depositary to maintain oversight of the function.

It is standard market practice in the UK for certain functions to be delegated by the UCITS manager to a third party specialising in functions such as pricing and the sale, issue, re-purchase, redemption and cancellation of units. The Depositary's supervisory function within this process is to oversee the UCITS manager or the third party undertaking these functions. This is achieved via a process of review of systems, controls and procedures as well as sample testing of any output.

In these circumstances the Depositary is reliant upon the performance of the third party and it would seem unreasonable to be held solely accountable or liable for any failings or errors that might occur in a third party's performance of such duties. Where a Depositary is identified as being partially culpable in the mis-pricing of a UCITS fund it would be held accountable for its part in the failure and compensate the fund or investors accordingly.

Question 11) Do you foresee other situations where a risk associated with improper performance of the depositary duties might materialise?

As noted in our response for question 10, this question can only be answered once the functions of the depositary have been clarified. .

Question 12) Do you agree that safeguards against the risk associated with the improper performance of depositary duties, such as requiring that UCITS assets be segregated from the depositary's and sub-custodian's assets, should be introduced?

In the UK, depositaries are required by law to ensure the segregation of assets.

These are designed to protect the assets held in custody on behalf of the UCITS from the custodians own assets held in pooled accounts. Records must be retained to demonstrate the true (beneficial) owner of the assets. In the event of a lead custodian default it is then clear which assets actually belong to the. In the UK this ring-fencing is achieved by way of legally binding agreements between the Depositary and the Custodian and is also subject to detailed rules.

In circumstances where this is not permitted, as is the case for Central Security Depositories such as 'Euroclear' or 'Clearstream' these major international settlements systems have legislative backing that provides for an insolvency ring-fence.

It is also crucial to appreciate that the terms of the sub-custody legal agreements providing for an insolvency ring-fence will not necessarily be reliable. This is because when a foreign sub-custodian becomes insolvent, the mandatory provisions of the applicable insolvency law will determine the fate of the disputed assets. Where these legal applications conflict with any contractual provisions within the sub-custody agreement, the later will generally be disregarded. In order to protect against this circumstance the Depositary/Custodian will obtain local ring-fence opinions from lawyers within the jurisdiction of the sub-custodian. If this ring-fence cannot be guaranteed then this risk is communicated to the UCITS via statements within the Custody Agreement. We feel it would be helpful if this risk is fully disclosed to the UCITS investor within applicable scheme documentation. If safeguards are introduced below the level of the Depositary and the lead custodian, they will need to take into account fully the complexities of the differing legal and regulatory regimes in all foreign jurisdictions.

In addition to these practices the Depositary/Custodian will also undertake regular due-diligence to establish that the sub-custodians systems and procedures are adequate and that the custody accounts are regularly reconciled in line with local laws.

Question 13) Do you agree there should be a general clarification of the liability regime applicable to the UCITS depositary in cases of improper performance of custody duties?

Question 14) What adjustments to the liability regime associated to the custody duties of the UCITS depositary would be appropriate and under what conditions?

13) We agree that in some Member States civil law dictates that in the event that UCITS assets are lost due to a failure related to the safe-keeping function by a Depositary, the UCITS is entitled to full and immediate compensation, even though this is not currently a pre-requisite of the UCITS Directive itself.

Most other Member States adopt the approach of oversight and in practice perform this responsibility by way of due-diligence or control over the assets as already discussed in our responses to earlier questions.

We strongly advise against the suggested change in the liability standard from one of unjustifiable failure (which in our opinion is fair given the numerous parties currently involved in the custody of assets) to what appears to be a strict liability regime. We also advise against an inversion of the burden of proof as proposed in the AIFM Directive.

The Commission would be recommended to undertake further work in order to fully understand the variety of custody business models operating in the current market environment to fully appreciate the possible outcomes and cost implications of their proposals. Global Custody in the status to which it has become highly evolved is complex and needs to be fully appreciated.

Making the Depositary solely liable for all losses associated with UCITS assets could have significant unintended consequences for both the Depositary and Fund Management industries. For example does this mean that the Depositary would be liable for fraud if it cannot "prove that it could not have avoided the loss which has occurred" (Art 17(5)). The implication could be that the Depositary would have to go beyond what is expected of a professional Depositary, as would be the case under the current regime. One might be concerned if that were the case that Custodian and Depositary capital adequacy requirements could soar to unreasonable levels; in fact in the current environment would there be sufficient capital available? Also, Depositaries might decide that custody of assets in certain markets would be too risky, for example certain countries in central and Eastern Europe, South America and other emerging markets. This will result in a restriction for managers in their choice of investments, directly impacting retail investors. In addition, there could also be some concern that impressing a stricter liability regime would force greater consolidation in an already consolidated market with the resulting potential for greater systemic risk.

We believe that the CESR review should be completed so that the Commission can then assess whether the liability regime needs to be clarified as setting a fully harmonised liability regime in the EU would require significantly more work and analysis than that suggested by the timelines set by the Commission. The complexities of the 27 different liability regimes (including property rights, insolvency law etc) creates the absolute need of a considered consultation with significant industry participation.

- 14) We do not feel that any adjustments to the liability regime need to be made for the reasons stated above. In addition we feel that the issues need to be identified before change is introduced as otherwise the changes proposed within the AIFM Directive may not in any way address the issues (if there are any)

Question 15) Do you agree that the conditions upon which the UCITS depositary shall be able to delegate its duties to a third party should be clarified?

One could argue that a Custodian's selection of certain local market sub-custodians is not an actively chosen option to delegate a function, but a necessity which is dictated by market practice and the conditions necessary to afford investors the best possible protection generated by local market knowledge.

So in providing custody services a custodian could be seen to be acting as typically required by local market practice. It is the same or similar in nature to those circumstances already discussed in some of our earlier responses where we explain how the Depositary/Custodian interacts with a number of different entities that are not in fact agents of the Custodian such as brokers, Central Securities Depositories, registrars and transfer agents who have responsibility for registration of the UCITS assets.

In making this argument it is important to note that the appointment of a sub-custodian is carried out with all due care, skill and reasonableness and we do not believe that there is any necessity for this practice to change, or indeed for the standard to become a strict liability standard. . Once again, it would be unreasonable for the Depositary to be solely responsible or liable for the inappropriate actions, or failed actions, of one of the sub-custodians appointed by it,

providing that it could demonstrate through thorough and adequate due-diligence that the sub-custodian it had appointed had generated an 'unjustifiable failure', rather than a justifiable one.

If however, consensus dictates, and the Commission decide that the use of sub-custodians did constitute delegation, further clarification concerning the conditions upon which the UCITS depositary will be able to delegate its duties to a third party would be necessary.

Question 16) Under which conditions should the depositary be allowed to delegate the performance of its duties to a third party?

As we have explained, it is impossible for a Depositary or Custodian to operate in isolation, so to insist that it could not 'delegate' the performance of its duties to a third party would make the Custody business inoperable, causing a drastic reduction in the types of instruments (both asset types and jurisdictions for investment) that a UCITS could hold within its portfolio. This by extension would result in a reduction of protection for investors, something that we believe the Commission does not intend.

Question 17) Do you agree that the depositary should be subject to additional on-going due diligence requirements when delegating the performance of its duties to a third party?

In the UK the Depositary/Custodian is already required to undertake on-going due-diligence requirements when delegating the performance of its duties to a third party. These requirements are enshrined in the Financial Services Authority (FSA) Principles for Business, specifically Principle 10 (client's Assets) which requires a firm to arrange adequate protection for client's assets when it is responsible for them. More detailed requirements are also contained within the FSA Client Assets sourcebook (CASS). The CASS rules also, where relevant, implement the provisions for Markets in Financial Instruments Directive (MiFID). This regulates the obligations of a firm when it holds financial instruments belonging to a client in the course of MiFID business.

CASS Chapter 6.3 specifically covers circumstances where a firm may deposit safe custody assets held by it on behalf of its clients into an account or accounts opened with a third-party, but "only if it exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those safe custody assets." The rules and guidance then go on to further explain exactly how the assets should be separately identifiable from the assets belonging to the UCITS from those of the third party.

Full details can be obtained from the FSA website located at: www.fsa.gov.uk

Although there are detailed requirements already in place within the UK, it would be useful to clarify the approach that is required across all Member States.

C. Default (bankruptcy)

Question 18) Do you share the Commission services approach to reviewing the ICSD, to allow UCITS to benefit from a compensation scheme where the depositary defaults?

Question 19) Do you agree that UCITS holders should also benefit from compensation if their custodian defaults and these assets are lost?

18 & 19) While we believe that the Capital Requirement of the Depositary is already sufficient, should the Commission wish to proceed with a review of the ICSD there would need to be a detailed cost/benefit analysis, including consideration of an appropriate level of cap, recognising fee levels across the industry.

III.ORGANISATIONAL REQUIREMENTS

Question 20) Do you agree that the general organisation requirements that are applicable to a UCITS depositary should be clarified?

Question 21) If so, to what extent?

20) We recognise the different approaches across Europe but we do not believe that the area needs any further clarification.

We do however appreciate that it might be beneficial to review standards across Member States in order that they might become harmonised, however any changes post Madoff / Lehmans need to be proportionate and reflect real contributing factors to those losses.

21) Having established best practice it might be beneficial to communicate to Member States what is expected in this regard. However, we feel this would be better provided as guidance, rather than a more explicit Directive requirement. This would allow for national legislation requirements to be more easily accommodated.

Question 22) Do you agree that requirements on conflicts of interest applicable to UCITS depositaries should be clarified?

Question 23) If so, to what extent?

22) We do not feel that there is any requirement for conflicts of interest applicable to UCITS depositaries to be clarified. The Directive is already sufficiently clear in its intent.

23) See above comments.

IV.ELIGIBLE DEPOSITARY INSTITUTIONS

A. The type of eligible institution

Question 24) Do you agree that there is a need for clarifying the type of institutions that should be eligible to act as UCITS depositaries?

Yes.

Question 25) Do you agree that only institutions subject to the CRD should be eligible to act as UCITS depositaries?

Whilst this seems like a prudent approach to adopt, we feel it important to draw the Commissions attention to the fact that not all depositaries currently in existence are actually credit institutions. This might affect such institutions, as their business operating models may need to be revisited.

Question 26) If not, which types of institutions should be eligible to act as UCITS depositaries, and why?

As some Depositaries are not themselves credit institutions, we believe the requirement should be extended to bodies that are guaranteed by credit institutions and those bodies that offer equivalent protection in terms of capital requirements.

V. SUPERVISION ISSUES:

A. Supervision by auditors

Question 27) Do you agree that additional auditing requirements should be imposed, such as an annual certification of the depositary's accounts by independent auditors?

We agree with this approach.

B. Supervision by national regulators

Question 28) Do you agree that UCITS depositaries should be subject to a specific 'depositary' approval by national regulators?

Most institutions acting as depositaries are already subjected to obtaining local regulator permissions in order to be established to operate that kind of business model. In the UK depositary companies must apply to the FSA and seek permission to undertake a wide variety of regulated activities, which are then restricted to acting as either a Trustee of an authorised unit trust or Depositary of an Investment Company with Variable Capital (ICVC).

We therefore have no objections to being in agreement with this approach, so long as the Commission provide sufficient flexibility for local legislation to be able to continue in force, unimpeded.

Question 29) Do you believe that there is need to promote further harmonisation of the supervision and cooperation by European regulators of depositary activities?

A. We would welcome further clarification on what the Commission might mean by this question in practical terms.

What are your views on the creation of an EU passport for UCITS depositaries?

B. We do not believe that a Depositary passport is consistent with the requirements placed on the Depositary under the Management Company passport. The Management Company Passport envisages a 'local point of contact' for the UCITS and this obligation seems to have been placed on the Depositary of the host state.

VI. OTHER INVESTORS PROTECTION ISSUES

A. Calculation of the net asset value of the UCITS shares and units by an independent valuator

Question 30) As far as the UCITS portfolio and UCITS units or shares are concerned, do you agree that their value should be assessed by an independent valuator?

Question 31) If so, what should be the applicable conditions for an entity to be eligible to act as an UCITS Valuator?

30) We believe that the responsibility for pricing the UCITS fund lies solely with the UCITS manager, especially as they have detailed knowledge of what they are investing in (specifically in relation to OTC derivatives or structured products). Whilst the operational function may be delegated, responsibility cannot be.

In giving consideration to a response for this question, we wonder how the independent valuator might liaise or interact with the UCITS Manager in instances where Fair Value

Pricing is applied for example. How frequently would the independent valuator be required to assess the UCITS units or shares? Would it be at each valuation point, quarterly, or year-end?

When you take into account the fact that the depositary also has a responsibility of oversight of this function and the funds are audited by an independent firm of accountants at year-end, we do not necessarily see a need to introduce this additional requirement.

We would however welcome additional clarification from the Commission regarding what the specific requirements might be, so that we might give this question further consideration.

31) Please see comments above.